

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

EDGAR RODRIGUEZ,

Civ. No. 6:18-cv-01640-MK

Plaintiff,

**ORDER**

v.

TIMOTHY HUNT; MARK  
HUBBARD; FAITH MCCREADY;  
CITY OF EUGENE,

Defendants.

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AIKEN, District Court Judge

This matter comes before the Court on a Findings and Recommendation (“F&R”) filed by Magistrate Judge Mustafa Kasubhai. ECF No. 164. Judge Kasubhai recommends that Defendants’ Motion for Partial Summary Judgment and Defendant Faith McCready’s Motion for Judgment on the Pleadings, ECF No. 123, be granted in part and denied in part. Judge Kasubhai also recommends that Plaintiff’s Motion for Partial Summary Judgment, ECF No. 134, be granted in part and denied in part.

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of

the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”). Although no review is required in the absence of objections, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court should review the recommendation for “clear error on the face of the record.”

Here, Defendants have filed Objections to the F&R, ECF No. 166, and Plaintiff has filed a Response to the Objections, ECF No. 167. The Court has reviewed the record, the F&R, and the Objections and finds no error. The F&R, ECF No. 164, is ADOPTED. Defendants’ Motion for Partial Summary Judgment and Defendant Faith McCready’s Motion for Judgment on the Pleadings, ECF No. 123, are GRANTED in part and DENIED in part as follows:

Defendant Faith McCready’s Motion for Judgment on the Pleadings is DENIED.

Defendant Faith McCready’s Alternative Motion for Summary Judgment is GRANTED as to Plaintiff’s First, Second, Fourth, and Fifth Claims for Relief; and DENIED as to Plaintiff’s Third Claim for Relief.

Defendant City of Eugene's Motion for Summary Judgment for Summary Judgment on Plaintiff's Fifth Claim for Relief (Excessive Force) is GRANTED.

Defendant City of Eugene's Motion for Summary Judgment on Plaintiff's Fourth Claim for Relief (Intentional Infliction of Emotional Distress) is GRANTED as conceded.

Defendant City of Eugene's Motion for Summary Judgment on Plaintiff's Third Claim for Relief (Negligence) is DENIED.

Plaintiff's Motion for Partial Summary Judgment, ECF No. 134, is GRANTED in part and DENIED in part as follows:

Motion 1 on Defendant's Second Affirmative Defense is DENIED.

Motion 2 on Defendant's Third Affirmative Defense is GRANTED as to Plaintiff's Section 1983 claim and otherwise DENIED.

Motions 3 and 4 on Defendants' Fourth and Fifth Affirmative Defenses are GRANTED as conceded.

Motion 5 on Defendants' Sixth Affirmative Defense is DENIED.

Motions 6-8 on Defendants' Seventh, Eighth, and Ninth Affirmative Defenses are DENIED as moot.

Motion 9 on Defendants' Eleventh Affirmative Defense is GRANTED.

Motion 10 on Defendants' Fourteenth Affirmative Defense is GRANTED.

It is so ORDERED and DATED this 28th day of October 2024.

/s/Ann Aiken  
Ann Aiken  
U.S. District Judge